



Texas Department of Banking Special Audits Division

**Commissioner Randall S. James
Deputy Commissioner Stephanie Newberg**

A Regulatory Update for Sellers of Preneed Funeral Contracts and Licensed Perpetual Care Cemeteries April 2006

Departmental PFC Training Seminar and Upcoming Events

Overall industry feedback related to the PFC training seminar hosted by the Department which was held on October 19, 2005 at the Omni Hotel in Austin, TX has been extremely favorable. Topics covered by the Director and his examination staff included: permit requirements, preneed depositing regulations, trust and insurance policy activity reconciliations and claims processing. There were 184 members of the industry in attendance and continuing professional education credits were provided to funeral directors. The Department appreciates the large participant turnout. Future Department speaking engagements include the Texas Cemetery Association's convention in San Antonio in April 2006 and the Texas Funeral Directors Association convention in Arlington in June 2006.

Completion of Balance Due Section of At-Need Contracts

The Department has received a number of questions from insurance permit holders regarding completion of the balance due section on at-need contracts. As the permit holder, the insurance company is responsible for reviewing the preneed and at-need contracts to ensure that consumers are not overcharged. However, this task becomes more difficult if the balance shown on the at-need contract is not a true representation of the amount due. Understandably, for legal reasons, provider funeral homes are reluctant to show a balance due amount that is less than what remains to be collected from the permit holder, insurance company, and/or family. Because of the inconsistencies noted during examinations, this article will outline the acceptable ways to complete the required balance due section on the at-need contract.

Example A illustrates one acceptable completion method of the balance due section on the at-need contract (permit holder and funeral provider are not the same) where the funeral provider has only collected from the responsible family member. Note that the contingent amount due from the preneed contract is identified; however, since the funeral provider has not yet received the funds, the full amount of the unpaid balance is fully disclosed.

Example B illustrates the second acceptable completion method of the balance due section on the at-need contract where the funeral provider is also the permit holder or where the funeral has been fully paid.

**Example A****SUMMARY OF CHARGES**

PROFESSIONAL SERVICES	\$3,100.00
MERCHANDISE SELECTED	\$2,100.00
CASH ADVANCES	<u>\$1,250.00</u>
TOTAL OF ALL CHARGES (<i>Balance Due</i>)	<u>\$6,450.00</u>

METHOD OF PAYMENT

Less: Cash Received on Account: <i>From Jane Doe</i>	-\$1,250.00
Less: <i>Preneed Inflation Credit</i>	-\$200.00
<i>To Be Collected from ACME Preneed Policy</i>	
<i>Number 123 (\$5000.00)</i>	<u> </u>
UNPAID BALANCE	<u>\$5,000.00</u>

Example B**SUMMARY OF CHARGES**

PROFESSIONAL SERVICES	\$3,100.00
MERCHANDISE SELECTED	\$2,100.00
CASH ADVANCES	<u>\$1,250.00</u>
TOTAL OF ALL CHARGES (<i>Balance Due</i>)	<u>\$6,450.00</u>

METHOD OF PAYMENT

Less: Cash Received - <i>From Jane Doe</i>	-\$1,250.00
Less: <i>Preneed Inflation Credit</i>	-\$200.00
Less: <i>Preneed Contract – Acme #123</i>	<u>-\$5,000.00</u>
UNPAID BALANCE	<u>\$0.00</u>

Note: Remember, you also need to show any credit for preneed items not delivered at the time of need at the preneed price.

Properly completed at-need contracts enable the permit holder to demonstrate to the decedent's family and to the Department that all preneed prices were honored at the time of need and that the family was correctly billed. Failure to complete the balance due section of the contract will result in a violation of the Texas Administrative Code (Administrative Code) §25.10(c)(3)(A)(i), for insurance-funded or §25.11(c)(3)(A), for trust-funded permit holders. To correct this violation, the funeral provider must accurately complete the balance due section of the contract and have it counter signed by the family. Contract overcharges continue to be the most cited violation in preneed examinations and, as a result, are a crucial part of the Department's examination procedures.

Furthermore, where the balance due section indicates a refund due to the family, a copy of the refund check must be on file to avoid criticism during an examination. For third party agreements, rather than relying on the provider funeral home to refund any overpaid amount, the permit holder or insurance company may choose to draft two checks, one to the providing funeral home and one to the estate for the balance owing the family.

Package Pricing

If you offer package pricing, the Department recommends using standard pricing terminology to identify items on the preneed contract. Specifically, the Department recommends using the term "included" to identify items on the preneed contract that are included in a particular prepaid funeral package. Additionally, it is recommended that a copy of the price list detailing the preneed goods and services included in the package pricing be provided to the purchaser at the time of sale and also maintained in the purchaser's file. Further, if you elect to provide items on a preneed contract outside of a package at no additional charge, use either the terms "no charge" or "complimentary." Standard terminology should help facilitate the required preneed to at-need analysis and prevent confusion at the time of need.



Cancellation Form vs. Death Maturity Form

The Department has received several inquiries regarding the processing of a withdrawal when the purchaser of a prearranged funeral contract dies (who is also the beneficiary of the contract) and the funeral services of a non-contracted funeral home have been solicited by the purchaser's representative. In this type of scenario, the representative is either in debt to the servicing funeral home or has paid the funeral expenses with non-preneed funds. As a result, the purchaser's representative is requesting that funds related to the preneed contract be either refunded to them or forwarded to the non-contracted funeral home. Here lies the dilemma, which form should you use to process the withdrawal claim? The Department does not mandate which form to use as long as adequate documentation is maintained.

Therefore, for the scenario discussed above, the Department will allow the permit holder to utilize either a cancellation form or a death maturity form when processing the withdrawal claim. However, a few things to keep in mind: 1) if you process the claim on a cancellation form, for contracts executed after September 1, 2001, you are required to refund the principal plus one-half the accrued income; 2) a copy of the purchaser's death certificate must be provided; 3) if the refund is issued to the family, it is recommended that the refund check be issued to the estate of the deceased; 4) if the funds are requested to be forwarded to the non-contracted funeral home, a signed statement from the purchaser's representative requesting the delivery of funds and evidence of payment is required.

Legislation Passes Regarding Preconstruction Mausoleum Sales

As reported in the last newsletter, legislation introduced during the last 79th Session related to preconstruction mausoleum sales was passed. Sections 712.061-068 of the Texas Health and Safety Code (Health Code) outlines requirements related to the sale of undeveloped or "to be built" mausoleum spaces. The purpose of this legislation is to protect the interests of consumers who purchase crypt spaces in a mausoleum that has yet to be developed by ensuring funds are set aside for the ultimate construction. Please refer to the above referenced sections of the Health Code in the Law and Guidance Manual Section on the Department's website at www.banking.state.tx.us. Outlined below are the significant highlights of this legislation, which became effective on September 1, 2005.

- A corporation may not directly or indirectly sell or offer to sell undeveloped mausoleum spaces unless it has established a "preconstruction trust" or submits a performance bond payable to the Commissioner.
- A corporation must provide books and records for Departmental review related to any sales of undeveloped mausoleum spaces and any preconstruction trust established.
- A corporation must start construction of the mausoleum within 48 months after the date the first undeveloped mausoleum space is sold and must complete construction within 60 months after the date of the first such sale.
- A purchaser may cancel a contract and receive a full refund, if the corporation fails to construct the mausoleum within the specified time limits.



Delivery or Downgrade Credits on a Selected Casket

The Department has received a number of inquiries recently regarding what to do when a 19 gauge casket was sold years ago on the preneed contract, but current manufacturers are no longer producing this product. The funeral home should first discuss the delivery situation with the family. If the family elects to substitute a 20 gauge casket for the 19 gauge casket, the funeral home must calculate a credit due the family as with any downgrade in accordance with §154.1551(a)(2) of the Texas Finance Code. This section requires that the value of the surrendered casket be computed on a comparable time-price basis as the price charged for the substituted casket. In other words, the difference in price between a 19 and 20 gauge casket when the preneed was sold or when the at-need contract was written must be credited to the family. Documentation supporting the credit must be retained for review by the Department. Alternatively, under current preneed regulations and in accordance with contract provisions, the funeral home must deliver the preneed merchandise in equivalent quality, and therefore should deliver an 18 gauge casket at no additional cost to the family when a 19 gauge casket is no longer available or the family does not choose to downgrade.

Seizures, Receiverships and Awarded Preneed Contracts to Permit Holders

On August 4, 2005, the Department seized the records and funds relating to preneed contracts sold by Sutton's Paradise Funeral Home in San Antonio, and W.H. Littles & Sons Mortuary in Waco, for failure to renew their permits. In addition, Cease and Desist and Seizure Orders were served on the following establishments for selling prepaid funeral contracts without a license: Lopez Funeral Chapels in Carrizo Springs and Crystal City; Black's Funeral Home in Carthage; Guillen-Ramirez Funeral Home in Houston; and Curtis-Starks Funeral Home in Abilene, Texas.

LyBrand Services, Inc., dba LyBrand Funeral Home, Commerce, Texas, ceased funeral home operations and voluntarily relinquished their prepaid funeral permit to the Department in late 2005. The preneed contracts and funds were recently awarded to an active licensee, Coker Funeral Home in Greenville, Texas. In addition, the seized preneed contracts and funds associated with the former Burgess-Fry Funeral Home in Bowie, Texas, were recently awarded to Imperial Plans, Inc., Houston, Texas.

Lastly, Live Oak Cemetery (Live Oak), Nederland, Texas, a licensed perpetual care cemetery, was placed in receivership by the Attorney General's Office on September 15, 2005. The district court in Jefferson County issued a Temporary Restraining Order (TRO) against the cemetery, and appointed a Temporary Receiver to run the day to day activities of Live Oak. This litigation became necessary because Live Oak was in imminent danger of insolvency. The Department continues to attend hearing proceedings regarding this matter and will monitor the situation to ensure the rights and interests of property purchasers are protected.

If you would like to be added to our list for notification of prepaid funeral contracts available for bid from seizures, please submit a written request to the Department to the attention of Sheila Armstrong.

PFC and PCC ACH Authorization

The Department previously notified the industry of amendments to the Administrative Code requiring prepaid funeral permit holders and perpetual care cemetery certificate holders to pay annual license renewal and assessment fees by Automated Clearing House (ACH) debit. The amendments were approved in an effort to minimize disruption to the funeral home and cemetery daily operations and to reduce the



Department's administrative costs. The Department is currently utilizing the ACH method to collect fees associated with our perpetual care cemetery certificate holders.

Recently, the Department mailed out instructions and the required ACH debit forms to each prepaid funeral permit holder to be completed and returned by the end of April 2006. If you have any questions related to this correspondence, please feel free to contact the Department.

Staffing Changes

The Department is pleased to announce the appointment of Examiner Javier Reyes. He transferred to the Department from our sister agency, the Office of Consumer Credit Commissioner, in December 2005. Javier will be headquartered in Houston and will fill an existing vacancy in that region. On a sadder note, three examiners have recently resigned: Michele Leftwich and Emmy Amaya, both headquartered in Houston, and Kelly Golden headquartered in Dallas. Additionally, Kay Eudy, PFC administrator, recently retired. We wish them the best in their new careers and endeavors.

PFC/PCC Direct Headquarters Staff Telephone Numbers and Email Addresses¹

Special Audits Recorded Phone Routing Options	(512) 475-1290
Special Audits FAX	(512) 475-1288
PFC Administrator	(512) 475-1287
Sheon Williams, PCC Administrator	(512) 475-1283
Sheila Armstrong, PFC/PCC Program Specialist	(512) 475-1285
Review Examiner	(512) 475-1311
Russell Reese, Director	(512) 475-1324
Staff email addresses	first name.last name@banking.state.tx.us
Website address	www.banking.state.tx.us

If you would like to contact us by using the Department's toll-free number, please follow the directions below: Dial the toll-free number (877) 276-5554, and at the first menu prompt select "4" for Chartered or Registered By the Department, at the next menu select either "3" for Prepaid Funeral Contract Licensees OR "4" for Perpetual Care Cemetery Licensees.

¹ To contact a member of the field examining team including: Robert Harrell, Bill Hastings, Emery Hizon, Joseph Kalapach, Mark LaPlante, Javier Reyes, or Jesse Saucillo, please call one of the headquarters administrators listed above.